

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

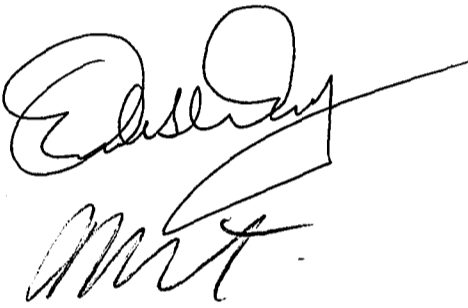
FIRST CIRCUIT

2014 CW 1691

DWAYNE BROWN

VERSUS

LOUISIANA DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS



Judgment Rendered: JUN 05 2015

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On Appeal from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Trial Court No. C620,233

The Honorable Wilson Fields, Judge Presiding

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Dwayne Brown  
Jackson, Louisiana

Appellant/Pro Se

William L. Kline  
Baton Rouge, Louisiana

Attorney for Appellee,  
Louisiana Department of Public  
Safety and Corrections

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

*Guidry, T. concurs in the result.*

**DRAKE, J.**

Dwayne Brown, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department) at Dixon Correctional Institute in Jackson, Louisiana, appeals a judgment of the district court that dismissed his petition for judicial review for lack of subject matter jurisdiction. For the reasons that follow, we convert the appeal to an application for supervisory writ of review, we grant the writ, vacate the district court's judgment, and remand the matter.

**FACTS AND PROCEDURAL HISTORY**

On September 23, 2012, Mr. Brown filed a request for relief under Administrative Remedy Procedure (ARP) No. DCI-2012-822 in accordance with the Corrections Administrative Remedy Procedure Act, La. R.S. 15: 1171, *et seq.* The record does not contain a copy of the initial grievance filed by Mr. Brown, but a copy of the Department's December 12, 2012 response denying Mr. Brown's first-step ARP request, as required by the Department pursuant to La. Admin Code 22:I.325(J)(1)(a), indicates that he was seeking a re-calculation of good time credit on his sentence. The Department again denied relief following the second-step on January 30, 2013. See La. Admin. Code 22:I.325(J)(1)(b).

On March 26, 2013, Mr. Brown filed a petition for judicial review in the Nineteenth Judicial District Court (19th JDC) claiming that he was entitled to be released from prison due to diminution of sentence for good time according to Department Regulation B-04-001; La. R. S. 15:529.1; La. R.S. 15:571.3(c)(1)(a) through (t)(2) and (3); La. R.S. 14:62.2; and La. R.S. 14:67.26(1). Mr. Brown also sought damages for being incarcerated longer than he believed he was supposed to be.

The 19th JDC Commissioner<sup>1</sup> (Commissioner) issued an order on April 22, 2013, relative to the improper cumulation of claims, since Mr. Brown sought both reduction in good time and damages, which each require different modes of trial and venue. See La. R.S. 15:1177 and La. R.S. 15:1184(F). The order by the Commissioner that purported to dismiss the damage claim did not contain an ARP number within the body of the order but several times stated, “#NOT PROVIDED.” Furthermore, the order refers to a “lost mail claim” and a damage claim. The claims made by Mr. Brown were for diminution of sentence for good time and damages. The Commissioner is correct as to the improper cumulation but incorrectly refers to a “lost mail claim” that does not appear to be present in this matter.

The Commissioner ordered that the matter proceed as an appeal of the ARP No. DCI-2012-822<sup>2</sup> and expressed an intent that a recommendation be made in the final Commissioner’s Report that the damage claim be dismissed without prejudice. The Commissioner did not issue his recommendation until May 29, 2014, over a year after his April 22, 2013 order, and the recommendation contained no reference to the damage claim. However, the Commissioner issued a recommendation pursuant to La. R.S. 15:1177(A), granting the Department’s exception of lack of subject matter jurisdiction since the petition filed by Mr. Brown was untimely.<sup>3</sup> The district court adopted the recommendation of the Commissioner after a *de novo* review of the record. It is from this judgment that Mr. Brown appeals.

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<sup>1</sup> The office of commissioner of the 19th JDC was created by La. R.S. 13:711 to hear and recommend disposition of criminal and civil proceedings arising out of the incarceration of state prisoners. La. R.S. 13:713(A). The commissioner’s written findings and recommendations are submitted to a district court judge, who may accept, reject, or modify them. La. R.S. 13:713(C)(5); see *Martinez v. Tanner*, 11-0692 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1082, 1084 n.3, *writ denied*, 11-2732 (La. 7/27/12), 93 So. 3d 597.

<sup>2</sup> The order does not specifically refer to ARP No. DCI-2012-822, but this is the ARP number of this matter.

<sup>3</sup> The record does not contain an exception filed by the Department even though the Commissioner’s Report and the judgment reference such an exception.

## DISCUSSION

Appellate courts have the duty to examine subject matter jurisdiction *sua sponte*, even when the parties do not raise the issue. *Texas Gas Exploration Corp. v. Lafourche Realty Co., Inc.*, 11-0520 (La. App. 1 Cir. 11/9/11), 79 So. 3d 1054, 1059, *writ denied*, 12-0360 (La. 4/9/12), 85 So. 3d 698. This court's appellate jurisdiction extends only to "final judgments." La. C.C.P. art. 2083; *Van ex rel. White v. Davis*, 00-0206 (La. App. 1 Cir. 2/16/01), 808 So. 2d 478, 483. A judgment that determines the merits in whole or in part is a final judgment. La. C.C.P. art. 1841.

Mr. Brown filed his request for judicial review claiming an error in the computation of his good time credits and also sought damages. The venue of the claim for the calculation of good time credits is controlled by La. R.S. 15:571.15, which requires the matter to be brought in East Baton Rouge Parish. The venue for delictual actions must be brought in the parish where the prison is located. La. R.S. 15:1184(F). The Dixon Correctional Institute is located in Jackson, Louisiana, which is in East Feliciana Parish.

The exclusive venue for delictual actions for injury or damages shall be the parish where the prison is situated to which the prisoner was assigned when the cause of action arose. La. R.S. 15:1184(F). When an action is brought in a court of improper venue, the court may dismiss the action or, in the interest of justice, transfer it to a court of proper venue. La. C.C.P. art. 121. *See Peterson v. Hanson*, 03-1448 (La. App. 1 Cir. 9/17/04), 897 So. 2d 32, 34. The 19th JDC was not the court of proper venue for the damage claim but had authority to transfer the case to the court with proper venue or dismiss the suit, without prejudice. *Hall v. Louisiana Department of Public Safety & Corrections*, 11-1476 (La. App. 1 Cir. 3/23/12) (unpublished).

In the present case, the Commissioner issued an order on April 22, 2013, finding: (1) that the matter would proceed on the administrative record only; (2) that a recommendation would be made in the final Commissioner's Report that the damage claim be dismissed without prejudice; and (3) that Mr. Brown had to file a separate suit within the prescriptive period allowed pursuant to La. R.S. 15:1177(C) and La. R.S. 15:1184(E)&(F) or within 60 days, whichever was later, in the court of proper venue. However, the final Commissioner's Report did not make any such recommendations with regard to the damage claim, and the judgment does not address the damage claim. Commissioners are allowed to "sign any and all orders which clerks of court are authorized to sign pursuant to Code of Civil Procedure Article 283." La. R.S. 13:713(B). However, the Commissioner is not given authority to sign judgments dismissing a claim pursuant to either La. R.S. 13:713(B) or La. Code Civ. Proc. art. 283. See La. R.S. 13:713(E)(1).

Appeals are taken from judgments. See *Davis v. Farm Fresh Food Supplier*, 02-1401 (La. App. 1 Cir. 3/28/03), 844 So. 2d 352, 353-54. The judgment in the present case does not dispose of, or even mention, the damage claim. Louisiana Code of Civil Procedure art. 1915 states:

A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

- (1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.
- (2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.
- (3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).
- (4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.

(5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.

(6) Imposes sanctions or disciplinary action pursuant to Article 191, 863, or 864 or Code of Evidence Article 510(G).

B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

This court has previously interpreted the above statute as follows:

Article 1915 lists the **exclusive** instances in which partial final judgments are permitted. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1241 (La.1993). Article 1915 divides the resolution of whether a judgment is an authorized partial final judgment into two categories: parties and issues. In multiparty litigation, a judgment which adjudicates the rights and liabilities of one or more, but less than all, of the parties and results in dismissal of one or more of these parties is a partial final judgment authorized under LSA-C.C.P. art. 1915. As such, the judgment is immediately appealable. On the other hand, a judgment which, without dismissing a party, only adjudicates some (but less than all) claims, defenses or issues is a valid partial final judgment, and thus appealable, **only** if expressly authorized by article 1915. *Everything on Wheels Subaru, Inc.*, 616 So.2d at 1241. This rule is designed to prevent multiplicity of appeals and piecemeal litigation. *Everything on Wheels Subaru, Inc.*, 616 So.2d at 1241.

*Best Fishing, Inc. v. Rancatore*, 96-2254 (La. App. 1 Cir. 12/29/97), 706 So. 2d 161, 165. Applying these precepts to the matter before us, the judgment rendered herein does not appear to fit in any of the enumerated instances in which a partial final judgment would be subject to immediate review on appeal. From the record, it appears that the district court intended to dismiss the damage claim without prejudice but inadvertently did not include the intended language in the judgment.

An appellate court has broad discretion to convert an appeal to an application for supervisory review, and because we find error in the district court judgment, which in the interest of judicial economy should be corrected, we will convert this appeal to an application for supervisory writs. *Stelluto v. Stelluto*, 05-0074 (La. 6/29/05), 914 So. 2d 34, 39. Furthermore, Mr. Brown filed his motion for appeal within the 30-day delay applicable to supervisory writs contained in Uniform Rules—Court of Appeal, Rule 4-3. *See Wooley v. AmCare Health Plans of Louisiana, Inc.*, 05-2025 (La. App. 1 Cir. 10/25/06), 944 So. 2d 668, 674 n.4.

Besides the district court's lack of issuing a judgment on the damage claim, this court notes other errors in the record. The Commissioner referenced ARP No. DWCC-2013-0661 in his report. However, Mr. Brown filed ARP No. DCI-2012-822. ARP No. DWCC-2013-0661 appears to belong to **John Brown** and was the subject of an opinion issued by this court on December 23, 2014, *Brown v. Louisiana Dept. of Pub. Safety & Corr.*, 14-0976 (La. App. 1 Cir. 12/23/14) (unpublished). In the December opinion, which addressed an ARP filed by **John Brown**, Judge Wilson Fields issued a judgment on the recommendation of the Commissioner. Thus, it appears that the Commissioner erroneously inserted the ARP number from the **John Brown** case into the present case, which involves **Dwayne Brown**. However, the facts in the Commissioner's Report all refer to the dates present in the case of **Dwayne Brown**, the matter presently before this court.

Furthermore, the order issued by the Commissioner with regard to the improper cumulation of the damage claim referred to a "lost mail claim" rather than a diminution in sentence due to good time claim and did not contain any ARP number in the body of the order. Mr. Brown claims on appeal that he "never received a copy of the Commissioner's Report or was given an opportunity to file a travers[al]." The order he did receive regarding the improper cumulation referred to a "lost mail claim." The appellate court shall render any judgment

which is just, legal, and proper upon the record on appeal. La. C.C.P. art. 2164. Given the confusion in the record as to the proper ARP numbers and the claims pending before the district court, we vacate the judgment and remand this matter to the district court.

### **CONCLUSION**

Accordingly, this court converts the appeal to a supervisory writ. Exercising our supervisory jurisdiction, we vacate the judgment and remand the case for further proceedings consistent with the views expressed herein. As Dwayne Brown was granted leave to pursue this appeal in forma pauperis and the Department of Public Safety and Corrections has not filed a brief, we will not assess costs in this matter.

**APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT, WRIT GRANTED; JUDGMENT VACATED AND REMANDED.**